

# Order

Michigan Supreme Court  
Lansing, Michigan

February 1, 2008

Clifford W. Taylor,  
Chief Justice

133208

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

ROBERTA HOPKINS, Personal  
Representative of the Estate of  
Olive Herford, Deceased,  
Plaintiff-Appellee,

v

SC: 133208  
COA: 261867  
Genesee CC: 04-079449-NH

JAMES E. GRAHAM, JR., M.D.,  
JAMES E. GRAHAM, JR., M.D., P.C.,  
FARAH TAHER, M.D., and PHAN ANH  
NGUYEN,  
Defendants-Appellees,

and

HURLEY MEDICAL CENTER,  
Defendant-Appellant.

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By order of May 30, 2007, the application for leave to appeal the April 20, 2006 judgment of the Court of Appeals was held in abeyance pending the decision in *Mullins v St Joseph Mercy Hosp* (Docket No. 131879). On order of the Court, the case having been decided on November 28, 2007, 480 Mich \_\_\_\_ (2007), the application is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals because the court erred in invoking the doctrine of equitable tolling under these circumstances. *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 586-587 n 65 (2005). However, because the plaintiff falls within the class of plaintiffs entitled to relief identified in our order in *Mullins*, *supra*, we REMAND this case to the Genesee Circuit Court for entry of an order denying the defendant's motion for summary disposition and for further proceedings not inconsistent with this order and the order in *Mullins*.

CAVANAGH and WEAVER, JJ., concur in the result.

KELLY, J., concurs and states as follows:

I concur with the conclusion that our decision in *Waltz v Wyse*<sup>1</sup> does not bar plaintiff's claim. But, as explained in my statement in *Mazumder v Univ of Michigan Bd of Regents*,<sup>2</sup> given the state of the law when the Court of Appeals rendered its decision, resort to the doctrine of equitable tolling was highly appropriate.

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<sup>1</sup> *Waltz v Wyse*, 469 Mich 642 (2004).

<sup>2</sup> *Mazumder v Univ of Michigan Bd of Regents*, \_\_\_ Mich \_\_\_ (2008).



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 1, 2008

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk